

**Letter of Findings Number: 03-20130488P**  
**Tax Administration**  
**For Tax Year 2013**

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**ISSUES**

**I. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent penalty.

**II. Tax Administration–Interest.**

**Authority:** IC § 6-8.1-10-1.

Taxpayer protests the imposition of interest.

**STATEMENT OF FACTS**

Taxpayer is an Indiana service company. Taxpayer did not timely file the required WH-1 or remit the withholding tax for the period ending May 31, 2013. The Indiana Department of Revenue ("Department") imposed a ten percent negligence penalty and interest. Taxpayer protests the imposition of the penalty and interest. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

**I. Tax Administration–Penalty.**

**DISCUSSION**

The Department imposed a penalty and interest for late filing of the required WH-1 and late payment of the withholding tax for the tax period ending May 31, 2013. Taxpayer protests the imposition of the penalty. The issue is whether the penalty imposed shall be waived.

A taxpayer who, upon examination by the Department, incurs a deficiency due to negligence is subject to a penalty. IC § 6-8.1-10-2.1(a). The Department shall waive the penalty if the taxpayer demonstrates that the failure to file the required return or pay the outstanding taxes "was due to reasonable cause and not due to willful neglect." IC § 6-8.1-10-2.1(d); see also [45 IAC 15-11-2](#). A taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in failing to file the required return or pay the outstanding taxes by the due date. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2](#)(b) and (c).

In this case, Taxpayer demonstrated that it is familiar with the procedure for filing of a WH-1 and remitting the withholding tax. It is also familiar with the consequences of filing a WH-1 or paying the withholding tax late, incurring penalties on four (4) previous occasions. Taxpayer provided documentation showing that the penalty imposed in 2006 was due to the Department's error, and that penalty was abated. However, Taxpayer received a "one-time" abatement of the penalty imposed in 2010. For the tax period in question, Taxpayer has not shown by specific facts that it had a reasonable cause for its failure to file the required WH-1 or remit the proper amount of funds withheld by the due date. The Department already accommodated the Taxpayer in 2010 by granting a "one-time" abatement of a penalty. The Department must decline the opportunity to do so again. The penalty is not waived, and Taxpayer's protest is denied.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration–Interest.**

**DISCUSSION**

The Department imposed a penalty and interest for late filing of the required WH-1 and late payment of the withholding tax for the tax period ending May 31, 2013. Taxpayer protests the imposition of the penalty. The issue is whether the interest imposed shall be waived.

A taxpayer who fails to file a required return or pay the required tax is subject to interest. IC § 6-8.1-10-1. Taxpayer has not demonstrated that it is part of an amnesty program or that the proposed assessment was issued outside the required time limit. Therefore, by statute, the Department cannot waive the interest imposed here. IC § 6-8.1-10-1. The interest is not waived, and Taxpayer's protest is denied.

**FINDING**

Taxpayer's protest is denied.

**SUMMARY**

Taxpayer's protest is denied on Issue I regarding the imposition of the penalty. Taxpayer's protest is denied on Issue II regarding the imposition of interest.

